RACHAEL MEI LING ONG & ANOR

v.

DATO' BRUNO HENRY ALMEIDA

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN JC
[ORIGINATING SUMMONS NO: S2-24-128-1997]
17 NOVEMBER 1997

CIVIL LAW ACT: *Insurance - Life insurance policy - Whether part of assets of a deceased's estate - Civil Law Act 1956, s. 23(1)*

SUCCESSION: *Executors - Duties of - Whether must explain actions to beneficiaries - Whether under duty to provide statement of accounts - Whether bound to comply with directions of beneficiaries*

SUCCESSION: *Executors - Remuneration of - Court's power to decide on remuneration payable - Probate and Administration Act 1959, s. 43*

TRUSTS: *Administration of Estates - Insurance policy - Whether constitutes asset - Civil Law Act 1956, s. 23(1)*

TRUSTS: *Trustees - Determination of whether executor of estate a trustee - Civil Law Act 1956, s. 21 - Trustee Act 1949*

TRUSTS: *Trustees - Removal - Whether court can remove or substitute trustee - Rules of the High Court 1980, O. 80 r. 2(3) - Trustee Act 1949, s. 45(1)(a)*

TRUSTS: *Trust property - Beneficiaries sui juris and absolutely entitled - Whether court could order trust to cease - Principles applicable*

The plaintiffs were the only children and absolute beneficiaries under the will of their father, Ong Soon Hoe ('the deceased'), who died on 21 August 1994. The defendant was named the sole executor and trustee of the deceased's will. The plaintiffs applied to have the defendant removed and/or substituted as the executor and trustee, citing as their grounds the defendant's lack of diligence and/or wilful default while acting in his capacity of executor and trustee, particularly: (i) engaging two firms of solicitors to attend to the probate of the deceased's will; (ii) wrongly including certain excluded items such as Employees Provident Fund ('EPF') moneys, a Citibank trust account, and a life insurance policy as the estate's assets; (iii) failing to render a statement of accounts; (iv) failing to abide by the plaintiffs' wishes for the income from the estate to be paid into an offshore trust accounts; and (v) charging a fee of $300,000 as fees.

In response, the defendant argued that: (i) it was his prerogative to select solicitors and he did not need the plaintiffs' prior approval to change solicitors; (ii) he had been directed by the income tax department to include the Citibank trust account as part of the assets of the deceased's estate because of an ongoing investigation into the deceased's tax matters; (iii) as no losses had been incurred and proper accounts were kept by him, the plaintiffs ought not to be allowed to raise the issue of a lack of a statement of accounts; and (iv) payment into an offshore trust account was illegal as it amounted to tax evasion.

Held:

[1] Whilst the defendant had the prerogative to choose the counsel whom he thought would best serve the interests of the estate, he owed the plaintiffs an explanation for his reasons, more so when the plaintiffs resided in the United Kingdom.

[2] It was clear that the EPF moneys were not to be included in the assets of the estate, and furthermore, the plaintiffs' mother was the named beneficiary of the moneys. There was also no evidence to show that the income tax department had directed the defendant to include the Citibank trust account as part of the assets of the deceased's estate.

[3] Pursuant to s. 23(1) of the Civil Law Act 1956 ('the CLA'), a life insurance policy can never form part of the assets of a deceased person.

[4] The plaintiffs were entitled to receive from the defendant a statement as to the state of affairs of the estate, on a monthly basis. A copy of the monthly bank statement would have sufficed if proper audited accounts were not available.

[5] No inheritance tax is payable in Malaysia and estate duty has been abolished since 30 January 1992. As such, there were no taxes to be evaded. It was therefore open to the plaintiffs to direct the defendant as to the payment of the trust income.

[6] The fee of RM300,000 charged by the defendant was exorbitant. Section 43 of the Probate and Administration Act 1959 allows the court the discretion to award a commission to an executor after taking into account the executor's conduct in administering the estate.

[7] Section 21 of the CLA provides that an executor is deemed a trustee of the residue of the estate which is not expressly disposed of, and under the Trustee Act 1949, a trustee includes a personal representative. The court therefore held that the defendant was acting as a trustee as well as an executor.

[8] Order 80 r. 2(3) of the Rules of the High Court 1980 allows the court the power to remove or substitute an executor or trustee. Furthermore, s. 45(1)(a) of the Trustee Act 1949 gives the court the power to appoint new trustees and s. 60(1) thereof allows a beneficiary to bring such an application.

[9] Where the beneficiaries are all of one mind and not under any legal disability, they may if they so wish, extinguish the trust without reference to the trustees. The deceased had left his entire estate to the plaintiffs in equal shares and it was clear that he had intended the trust to cease upon their attaining the age of majority. As both the plaintiffs were above the age of majority and in view of the hostility between the parties, the trust was ordered to cease. The plaintiffs' share in the estate was to be vested in them in their personal capacities and they were made administrators of the unadministered balance of the estate.

[10] As the defendant contended that there were moneys owing to the income tax department by the estate, the sum of RM250,000 was to be reserved for payment of taxes.

[Application allowed, each party to bear its own costs.]

Cases referred to:
Commissioners of Inland Revenue v. Executors of Hamilton-Russell [1943] 1 All ER 474 ***(foll)***
Gosling v. Gosling [1859] John 265 ***(foll)***
Letterstedt v. Broers & Anor [1884] 9 AC 371 ***(foll)***
Lim Kar Bee v. Duofortis Properties (M) Sdn Bhd [1992] 3 CLJ 1667 ***(dist)***
Re Man Mihat decd [1965] 1 MLJ 1 ***(foll)***
Stephenson (Inspector of Taxes) v. Barclays Bank Trust Co Ltd [1975] 1 All ER 625 ***(foll)***

Legislation referred to:
Civil Law Act 1956, s. 23(1)
Contracts Act 1950, s. 24(b)
Probate and Administration Act 1959, s. 43
Rules of the High Court 1980, O. 80 r. 2(3)(e)
Trustee Act 1949, ss. 45(1)(a), 60(1)

Other source referred to:
Executors, Administrators and Probate, William, Mortimer & Sunnucks, p 731

For the plaintiffs - Balbinder Kaur (Rozilawathi Ariffin & Izzat Othman with him); M/s Chua Brothers, Azzat & Izzat
For the defendant - J Chandra; M/s Arbain Chandra Chew & Assoc

Reported by Anne Khoo

JUDGMENT

RK Nathan JC:

Facts

The plaintiffs in this action are the absolute beneficiaries of the estate of the late Ong Soon Hoe @ Patrick Ong (the deceased). They are the only two daughters of the deceased and are of full age. The deceased died on 21 September 1994, leaving a will dated 6 March 1989 and naming the defendant as the sole executor and trustee of his will. A provision was made that in the event the defendant predeceased the deceased, then one Tan Sri Datuk Augustin Ong Soon Hock (Tan Sri) was named as the alternate executor/trustee. Pursuant to the will the deceased bequeathed all his assets, both moveable and immoveable, to the plaintiffs. The defendant was appointed executor and trustee on 17 August 1996 by the Shah Alam High Court on 17 August 1997.

The Application

This is the plaintiffs' application against the defendant (encl. 1) to have the defendant removed and/or substituted as the executor/trustee of the deceased's estate for the defendant's lack of diligence and/or act of wilful default while acting in his capacity as the executor/trustee of the estate of the deceased.

Plaintiffs' Case

It is the plaintiffs' contention that from the time the defendant was appointed as the executor he had acted in a dilatory manner in administering the estate. The defendant had ignored and defied the plaintiffs' wishes and refused to supply the plaintiffs with relevant information pertaining to their late father's estate. With regard to lack of diligence and unreasonable conduct the plaintiffs gave examples.

(i) Engaging Two Firms Of Solicitors

It was pointed out that the defendant had engaged two firms of solicitors to attend to the probate of the deceased's estate and that the estate had to pay legal fees to both the firms. The earlier solicitors, Messrs Sri Ram & Co, had billed RM21,000 for work done. It was the contention of the plaintiffs that

the defendant had failed to inform the plaintiffs the nature of the work that was attended to by the earlier solicitors. He had also failed to inform them nor did he advise the plaintiffs of the reason for a change of solicitors to the present solicitors. The defendant had stated that the fees of the present solicitors was RM15,580 as shown by their bill dated 29 June 1996, whereas in disclosing the liabilities in respect of the probate the defendant had stated "Yuran Peguamcara RM31,000". The plaintiffs therefore argued that the defendant had failed to provide an explanation as to how the legal fees was calculated to amount of RM31,000 when the bill from the present solicitors indicated a sum of RM15,580. This they contended was a clear example of the defendant's failure to keep proper accounts of the estate.

In reply the defendant contended that whilst the agreed fees for Messrs Sri Ram & Co was RM21,000, upon being discharged after an initial sum of RM10,500 had been paid, the said solicitors had insisted on the full balance or they wished to tax their bill. The balance had not as yet been settled. In respect of switching to the present solicitors the defendant maintained that it was his prerogative and that he did not need the prior approval of the plaintiffs regarding the change.

Whilst I agree that it is the right and prerogative of the defendant to choose counsel whom he thinks would best serve the estate, I cannot endorse the defendant's view that he owes no explanation to the plaintiffs as to why he switched lawyers. Whilst his explanation that the previous solicitors "were not giving the matter sufficient priority" is a bare statement, I find that even such an explanation if it was proffered to the plaintiffs, which I find was not done, lacked details and particulars, more so when it is clear that the plaintiffs are residing in the United Kingdom.

(ii) Wrongly Including Various Items Into The Assets

The plaintiffs contended that the defendant had wrongly included the deceased's (a) EPF monies, (b) the Citibank Trust Account, and (c) the Prudential Life Insurance Policy into the deceased's list of assets. However upon being informed by the plaintiffs' personal solicitors that the abovementioned three items do not fall into the category of assets of the estate, the defendant's solicitors then removed items (a) and (b) but not (c).

With regard to the EPF monies it is clear that one Mrs. Susan Wendy Richmond Ong, the mother of the plaintiffs is the beneficiary. This item therefore cannot be included into the list of assets.

The defendant contended that he was directed by an officer of the Inland Revenue Department to include the Citibank Trust Account as part of the deceased's estate, but I find no evidence to this effect. The defendant's contention that there was throughout an ongoing investigation by the Inland Revenue Department pertaining to the deceased's income tax seems to be unsubstantiated as no correspondence nor exhibits have been shown to this effect.

In respect of the Prudential Life Insurance Policy the defendant had exhibited a letter dated 14 December 1995 from Berjaya Prudential (HBA7 annexed to encl. 8), and had stated that pursuant to the said letter he had included this item under the deceased's assets. A perusal of the said letter shows no such requirement. In any event, it is plain as pikestaff that pursuant to s. 23(1) of the Civil Law Act 1956, the said policy of insurance can never form part of the assets of the deceased.

Section 23(1) reads:

> A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife or of his children or of his wife and his children or any of them, or by any woman on her own life and expressed to be for the benefit of her husband or of her children or of her husband and children or any of them, shall create a trust in favour of the objects therein named, **and the moneys payable under any such policy shall not so long as any object of the trust remains unperformed form part of the estate of the insured** or to be subject to his debts or her debts. (emphasis added)

In *Re Man bin Mihat, decd.* [1965] 1 MLJ 1 Suffian J (as he then was) held that by virtue of s. 23 of the Civil Law Ordinance 1956 as the policy of assurance was effected by the assured on his own life and expressed to be for the benefit of his wife, the moneys payable under the policy did not form part of the estate of the deceased.

(iii) Failure To Render Statement Of Accounts

The plaintiffs referred to exh. HBA12 which is a statement of accounts prepared by the defendant on 7 April 1997, that is a month after this suit was filed against the defendant. The plaintiffs contended that their earlier repeated requests for accounts of the estate went unheeded. The defendant responds, *inter alia*, that since no loss has been incurred and proper accounts have been kept by him the plaintiffs ought not to be allowed to raise this issue. Again I cannot accept this proposition. Surely the plaintiffs are entitled to be kept informed at least by way of a monthly statement as to the state of affairs of the estate. The defendant could have at least sent the plaintiffs a copy of the bank statement each month, if he was unable to send them proper audited accounts earlier.

(v) Offshore Trust Account

After obtaining the advice of several professionals including tax consultants, the plaintiffs decided to open an Offshore Trust Account as a tax management measure and by letter dated 3 December 1996 requested the defendant to place funds due to the plaintiffs in the said Offshore Trust Account presumably to avoid taxes. In para. 13 of the defendant's affidavit in reply, the defendant acknowledged that this move might enable the plaintiffs to save payment of at least 45% inheritance tax, and the defendant opined that this amounted to tax evasion and he refused to be a part of this "insidious and illegal scheme" where "their motive is to receive the cash assets without paying tax" and so his solicitors wrote a letter dated 6 December 1996 to this effect to the plaintiffs. The letters aforementioned are exhibited in "RN10" of the plaintiffs' affidavit in support of the application. A perusal of the letters showed no such exchange taking place. In any event, the defendant could only be right in his view if the Supreme Court's decision in *Lim Kar Bee v. Duofortis Properties (M) Sdn Bhd* [1992] 2 MLJ 281 SC is to apply. In that case a scheme was devised whereby the appellant, the registered owner of some valuable land in Penang, agreed to sell the land to a company and also executed a trust deed declaring that he held the land in trust for the company. The said company was incorporated together with another company, Lim Kar Bee & Sons Sdn Bhd, the holding company, and were formed in pursuance of a scheme devised by a tax consultant to avoid payment of estate duty payable in regard to the said land if the appellant/landowner died. In the original application before the High Court the issues that were raised and contested were that the various documents prepared, though signed by the appellant, were not explained to him; that there was misrepresentation by his daughter and that there was also undue influence. In respect of these issues, the learned trial judge came to conclusions against the appellant and granted the order as prayed in the originating summons. The appellant appealed and raised the question of illegality for the first time. The Supreme Court in allowing the appeal held that when the contract is not *ex facie* illegal, the court can still take judicial notice of illegality and refuse to enforce the contract even though illegality had not been pleaded but only in the situation when facts which have not been pleaded emerge in evidence in the course of the trial showing clearly the illegality. Such a situation the court found, existed in *Lim Kar Bee*. The Supreme Court further went on to hold that the real test to be applied in any given transaction seems to be whether the primary purpose of the transaction is to avoid tax; if it is, it is an illegal purpose, that is, of such a nature that, if permitted, it would defeat the tax law in question, thus coming under s. 24(b) of the Contracts Act 1950. It held that the primary purpose of the scheme in *Lim Kar Bee* was to avoid paying estate duty, especially bearing in mind that the said land would practically remain with members of the

immediate family of the appellant/ landowner in the sense that the children and the wife of the appellant/landowner would control exclusively the holding company without the need for them to pay one cent towards the purchase price of the said land. The scheme was therefore illegal. The agreement of sale and purchase of the said land and the subsequent trust deed were therefore unenforceable.

Whilst I am bound by this decision on the principle of *stare decisis* I must also satisfy myself that either this decision to open the Offshore Trust Account is *ex facie* illegal or whether it is in any way tainted with some form of illegality for the decision in *Lim Kar Bee* to apply. There is no inheritance tax payable in Malaysia. Further payment of estate duty has since been abolished by the Finance Act 476/92 which came into force on 30 January 1992. Since there is no estate duty payable, can the opening of the Offshore Trust Account be then considered to be an illegal act amounting to tax avoidance or tax evasion. There is no such tax to avoid and therefore in my judgment the decision in *Lim Kar Bee* will not affect this case and the opening of the Offshore Trust Account. In the circumstances the defendant was clearly in error in the opinion he held.

Therefore it is open to the beneficiaries to direct the trustees how to manage the trust fund. In *Stephenson (Inspector of Taxes) v. Barclays Bank Trust Co Ltd* [1975] 1 All ER 625, 637, Walton J said:

> Now it is trite law that the persons who between them hold the entirety of the beneficial interests in any particular trust fund are as a body entitled to direct the trustees how the trust fund is to be dealt with, and this is obviously the legal territory from which that definition derives. However, in view of the arguments advanced to me by counsel for the respondents, and more particularly that advanced by him on the basis of the decision of Vaisey J in *Re Brockbank* ([1948] 1 All ER 287, [1948] Ch 206), I think it may be desirable to state what I conceive to be certain elementary principles. (1) In a case where the persons who between them hold the entirety of the beneficial interests in any particular trust fund are all sui juris and acting together ('the beneficial interest holders'), they are entitled to direct the trustees how the trust fund may be dealt with. (2) This does not mean, however, that they can at one and the same time override the pre-existing trusts and keep them in existence. Thus, in *Re Brockbank* itself the beneficial interest holders were entitled to override the pre-existing trusts by, for example, directing the trustees to transfer the trust fund to X and Y, whether X and Y were the trustees of some other trust or not, but they were not entitled to direct the existing trustees to appoint their own nominee as a new trustee of the existing trust. By so doing they would be pursuing inconsistent rights. (3) Nor, I think, are the beneficial interest holders entitled to direct the trustees as to the particular investment they should make of the trust fund. I think this follows for the same reasons as the above.

(v) Executor's Fees

The defendant had charged the plaintiffs a sum of RM130,000 as his fees. To my mind this is exorbitant fees. Section 43 of the Probate and Administration Act 1959 reads:

> 43. Executor's or administrator's commission.
>
> (1) The court may in its own discretion allow the executors or administrators a commission not exceeding five per centum on the value of the assets collected by them, but in the allowance or disallowance of the commission the court shall be guided by its approval or otherwise of their conduct in the administration of the estate.

In the circumstances, the power of awarding a commission to the executor lies solely at the discretion of the court after taking into account the conduct of the executor in administering the estate. The defendant, in my view ought not to be allowed to fix an arbitrary figure as his fees. There should be an application to the court under s. 43 supported by evidence of his conduct in administering the estate so that the court may assess and make an order allowing him a commission of not more than 5% of the total value of the estate. It is for this purpose that I ordered the fees to be taxed and to be paid by the estate.

Power Of The Court To Remove And Substitute A Trustee

Section 21 of the Civil Law Act 1956 reads:

> 21. Executor deemed to be trustee for person entitled to residue on intestacy.
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> When any person dies or has died, having by his will, appointed any person to be his executor, the executor shall be deemed to be a trustee for the person, if any, who would be entitled to the estate in case the person died intestate in respect of any residue not expressly disposed of, unless it appears by the will that the person so appointed executor was intended to take the residue beneficially.

Therefore an executor is deemed to be a trustee to the residue of the estate which is not expressly disposed off.

The definition section of the Trustee Act 1949 defines "trust" as follows:

> "trust" does not include the duties of chargee, but with this exception the expressions "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incidental to the office of a personal representative and "trustee", where the context admits, includes a personal representative, and "new trustee" includes an additional trustee;

The expression "trustee" therefore includes the duties incidental to the office of a personal representative and trustee. William, Mortimer and Sunnucks on *Executors, Administrators and Probate* state at p. 731:

> Personal representatives as trustees
>
> ...
>
> Where property is bequeathed to executors, as trustees, if they prove the will, this is, in itself, an acceptance of the particular trusts.

I have no hesitation in holding that the defendant was also acting in his capacity as a trustee as well as an executor.

It is also my judgment that O. 80 r. 2(3) of the Rules of the High Court 1980 gives the court the general power to act in respect of an executor or trustee as provided under r. 2(3)(e) which reads:

> (3) Without prejudice to the generality of para. (1) an action may be brought for any of the following reliefs:
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> ...
>
> (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the court.

It is my judgment that this rule is wide enough to give the court the power to remove or substitute an executor or trustee, from such capacity.

Further s. 45(1)(a) of the Trustee Act 1949 gives the court the power to appoint new trustees and if it is inexpedient, difficult or impracticable to do so without the assistance of the court, the court may make an order to appoint a new trustee in substitution or in addition to any existing trustee. Under s. 60(1) of the same Act an order made under this Act for the appointment of a new trustee may be made upon the application of a person beneficially interested in the land, stock or thing in action.

Except in cases where on the true construction of the will, the gift is contingent on the legatee attaining the given age, it is clear that if there are several beneficiaries who are all of one mind, and who are not under any legal disability (ie, a minor or a mental patient), they may if they so wish extinguish the trust without reference to the trustees. In *Gosling v. Gosling* [1859] John 265 Page Wood VC said:

> The principle of this court has always been to recognise the right of all persons who attain the age of twenty-one to enter upon the absolute use and enjoyment of the property given to them by will, notwithstanding any directions by the testator to the effect that they are not to enjoy it until a later age – unless, during the interval, the property is given for the benefit of another. If the property is once theirs, it is useless for the testator to attempt to impose any fetter upon their enjoyment of it in full so soon as they attain twenty-one.

On a true construction of the will dated 6 March 1989, the testator devised and bequeathed all his movable and immovable property absolutely to his two children to hold in their personal capacities in equal shares. In para. 4 of his will he had provided as follows:

> In the event the laws of Malaysia or any other country in which any of my properties are situated preclude my named children from holding such properties in their personal capacity until such time as they reach the age of majority of that country, then and only in such event I give absolutely to my trustee the said properties to hold the same in trust for my children until such time as she/they reach the age of majority as aforesaid.

It is clear from the will that the testator intended the trust to cease upon both his children attaining the age of majority. The two children named in para. 2 of the will are Rachael Mei Ling Ong and Natalie Sue Ling Ong who were born on 29 July 1970 and 21 November 1972 respectively and are now 29 and 25 and are above the age of majority respectively. They should then in accordance with the terms of the will hold the properties in their personal capacities.

In *Commissioners of Inland Revenue v. Executors of Hamilton-Russell* [1943] 1 All ER 474, CA, the testator, *G.L. Hamilton-Russell* attained 21 years of age on 17 October 1928, was the sole beneficiary under a settlement and thereupon was then in law entitled to call upon the trustees to transfer over to him all the trust fund and all accumulations of income to himself. He did not in fact do so, but allowed the trustees to receive the income from the trust fund and the accumulation fund and to continue investing such income up to 18 January 1939. Luxmoore LJ in delivering the decision of the Court of Appeal held at p. 477 as follows:

> Obviously, in the present case, neither G.L. Hamilton-Russell nor the trustees of the settlement could, after G.L. Hamilton-Russell attained his majority, have insisted on the continuations of the trusts. The trustees could at any time after the happening of that event, even though G.L. Hamilton-Russell had requested them to continue the accumulations, have refused to do so and, if he had refused to accept a transfer of the trust funds, could have paid them into court just in the same way as G.L. Hamilton-Russell could, contrary to the wishes of the trustees, have insisted on a transfer to himself of the whole of the trust funds.

The facts in the above case are similar to that in this case, and I would accordingly hold that the same principle of law applies. That being the case, the trust should therefore cease and both children have become entitled and the benefit has since their attainment of the age of majority become vested in them in their personal capacities.

Further in *Stephenson (Inspector of Taxes) v. Barclays Bank Trust Co Ltd (supra)* Walton J said at p. 637:

> ... Moreover, it appears to me that once the beneficial interest holders have determined to end the trust they are not entitled, unless by agreement, to the further services of the trustees. Those trustees can of course be compelled to hand over the entire trust assets to any person or persons selected by the beneficiaries against a proper discharge, ...

I am further fortified in my view of this, when I find as a fact the existence of hostility between the beneficiaries and the defendant executor. When it becomes necessary for either party to deal with each other only through lawyers, and when suspicion and antagonism emanate the rubric of the trust collapses.

In *Letterstedt v. Broers & Anor* [1884] 9 AC 371 at 389 Lord Blackburn said:

> It is quite true that friction or hostility between trustees and the immediate possessor of the trust estate is not of itself a reason for the removal of the trustees. But where the hostility is grounded on the mode in which the trust has been administered, where it has been caused wholly or partially by substantial overcharges against the trust estate, it is certainly not to be disregarded.
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> Looking therefore at the whole circumstances of this very peculiar case, the complete change of position, the unfortunate hostility that has arisen, and the difficult and delicate duties that may yet have been performed, their Lordships can come to no other conclusion than that it is necessary, for the welfare of the beneficiaries, that the Board should no longer be trustees.

In the case before me the plaintiffs have similarly accused the defendant of overcharging and of dereliction of duty. To my mind it is unpalatable for the defendant to continue to perform this onerous task. It is obvious that the parties are unable to work together for the benefit of the estate. Besides even the defendant has complained that this work is indeed affecting his physical health and his job as a consultant. In the circumstances, it is my judgment that there is sound reason to excuse the defendant from being the executor/trustee of the estate and to put an end to the administration of the estate by the executor since both the beneficiaries are now majors and are personally entitled to the assets of the estate. After all even the defendant agrees that almost 90% of

the administration of the deceased's estate has been duly completed. Accordingly, the plaintiffs being of full age shall be made administrators of the balance of the estate thus far unadministered.

Since the defendant contends that the tax due to the Inland Revenue Department by the deceased for year 1995-1996 has yet to be paid I hereby direct that out of the said estate a sum of RM250,000 be reserved for the payment of the said taxes before the plaintiffs share equally the assets beneficially. I also give leave for either party to apply.

As for costs, it is my judgment that the proper order is that each party is to pay its own costs.

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